

TCEQ DOCKET NO. 2007-0275-UCR
APPLICATION NO. 35118-C

2007 NOV -2 PM 4: 20

PETITION BY THE CITY OF
FRISCO FOR APPROVAL OF A
CONTRACT DESIGNATING
SERVICE AREAS BETWEEN THE
CITY OF FRISCO, WATER
CERTIFICATE OF CONVENIENCE
AND NECESSITY (CCN) NO. 11772,
AND TERRA SOUTHWEST, INC.,
WATER CCN NO. 11608, IN
DENTON COUNTY; APPLICATION
NO. 35118-C

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CHIEF CLERKS OFFICE
BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

**THE EXECUTIVE DIRECTOR'S RESPONSE TO
TERRA SOUTHWEST, INC.'S MOTION FOR REHEARING**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

COMES NOW the Executive Director of the Texas Commission on
Environmental Quality (TCEQ) and files this response to Terra Southwest, Inc.'s
("Petitioner" or "Terra Southwest") Motion to Overturn (MTO) the Order of the
Commission approving a contract designating service areas between the City of Frisco,
water certificate of convenience and necessity (CCN) No. 11772, and Terra Southwest,
Inc., water CCN No. 11608. The Petition was filed pursuant to Section 13.248 of the
Texas Water Code (TWC), and sought to transfer approximately 355 acres of Terra
Southwest's CCN area to the City of Frisco ("Respondent" or "Frisco"). The Executive
Director does not object to the granting of the Motion by Terra Southwest, and in support
would show the following:

ED'S RESPONSE TO MTO
RE: REQUEST FOR APPROVAL OF CONTRACT
DESIGNATING SERVICE AREAS BETWEEN
CITY OF FRISCO AND TERRA SOUTHWEST, INC.

2007
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02:11 PM 1-10-07

BACKGROUND

An Order was issued by the Commission on September 5, 2007, approving a contract designating service areas between Frisco and Terra Southwest. Notice of the Order was mailed on September 20, 2007. Terra Southwest timely filed a Motion for Rehearing on October 12, 2007.¹ The City of Frisco filed a Response to the Motion for Rehearing on October 24, 2007.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the public without first obtaining a CCN.² Conversely, a municipality is not required to obtain a CCN to provide retail water service.³ However, a municipality may not provide service to areas that are outside of its corporate boundaries but within the CCN of another retail public utility without first obtaining written consent from that retail public utility.⁴ The Texas Water Code and TCEQ rules allow retail public

¹ Terra Southwest's motion was styled as a "Motion to Overturn", but because the decision to which Terra Southwest's motion refers was one made by the Commission, the motion should have been styled as a Motion for Rehearing. This error did not affect the substantive portion of the motion, therefore, the Executive Director will respond here as though it were properly styled.

² TEX. WATER CODE ANN. § 13.242(a) (Vernon 2006).

³ A municipality is a "retail public utility" under section 13.002(19) of the Texas Water Code but is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

⁴ *Id.* § 13.242(b).

utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs.⁵

ANALYSIS

The Executive Director, Terra Southwest, and Frisco have met and conferred and agree that the map attached to the agreement that was approved by the Commission on September 5, 2007 and incorporated into its Order contains an error; however the parties also agree that the map submitted as an attachment to Terra Southwest's Motion to Overturn does not depict the agreement correctly either. Therefore, the parties have begun the process of submitting the information the Executive Director's staff needs to draft an amended map. The language of the agreement is consistent with the parties' interpretation, and does not need to be changed. The Executive Director has no objection to altering the CCN map for the area to ensure that it accurately reflects the parties' intentions.

At the time this Response is being drafted, the parties intend to be prepared with a new map before the time for the Commission to act on this Motion for Rehearing expires. Thus, if the Commission considers the Motion for Rehearing at agenda, it would have the information necessary to act on the substantive question before it by approving the amended map at that time, obviating the need for an additional agenda setting.

⁵ *Id.* § 13.248; 30 TEX. ADMIN. CODE § 291.117 (West 2005) (Tex. Comm'n on Envtl. Quality, Contracts Valid and Enforceable). Section 13.248 states "[c]ontracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

CONCLUSION

For the above stated reasons, the Executive Director requests that the Commission grant Terra Southwest's Motion for Rehearing on its Order issued in the above captioned matter and reconsider the agreement with a corrected map concurrently with its granting of the Motion for Rehearing. In the alternative, the Executive Director requests that the Commission grant Terra Southwest's Motion for Rehearing on its Order and remand the matter to the Executive Director for resubmission of a corrected map at a later agenda.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Glenn Shankle
Executive Director

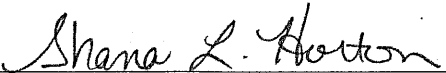
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RE: REQUEST FOR APPROVAL OF CONTRACT
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2007, a true and correct copy of the foregoing document was transmitted by first class mail, intra-agency mail or hand delivery to the parties listed below.


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